

w/o

FILED	
DATE: 3-8-2011	5:03 O'Clock P.M.
JEANNE HICKS, CLERK	
BY: T. Brogdon	Deputy

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF YAVAPAI

DIVISION PRO TEM B

JEANNE HICKS, CLERK

HON. WARREN R. DARROW

BY: T. Brogdon, Deputy Clerk

CASE NO. V1300CR201080049

DATE: March 8, 2011

TITLE:

COUNSEL:

STATE OF ARIZONA,

Yavapai County Attorney  
Sheila Polk/Bill Hughes,  
(Via OnBase)  
(For Plaintiff)

(Plaintiff)

v.

JAMES ARTHUR RAY,

Thomas K. Kelly,  
(Via electronic mail)  
(Co-Counsel for Defendant)

(Defendant)

Luis Li/Brad Brian/Truc Do/Miriam Seifter  
MUNGER TOLLES & OLSON LLP,  
(Via electronic mail)  
(Co-Counsel for Defendant, *Pro Hac Vice*)

HEARING ON:	NATURE OF PROCEEDINGS	COURT REPORTER
TRIAL – Day 11		Mina Hunt

START TIME: 8:35 a.m.

APPEARANCES:

Sheila Polk, Counsel for State  
Bill Hughes, Co-Counsel for State  
Detective Ross Diskin, Case Agent  
James Arthur Ray, Defendant  
Tom Kelly, Co-Counsel for Defendant  
Luis Li, Co-Counsel for Defendant  
Truc Do, Co-Counsel for Defendant  
Victim Services Representative

The Court, Counsel, Detective Diskin, Defendant, and Victim Services Representative are present. The Jury is not present.

Court and Counsel discuss Pretrial issues. Counsel argue their positions regarding recent Motions filed with the Court, exhibit 735 and anticipated witness testimony of prior events.

The Court advises it has indicated for 404(b) purposes, evidence of prior events is not admissible. Oral argument ensues regarding causation and 404(b) issues.

The Court advises it cannot rule in advance on evidence that is going to relate to what experts say, the Jury must decide factual issues. With regard to exhibit 735, the Court has requested *In Limine* instruction from Counsel. The Court **finds** exhibit 735 is admissible, not for the proof of the matter asserted but solely as it might relate to Mr. Ray being aware of people participating in games arguably in the fashion that he wanted them to participate. Oral argument ensues.

After review of exhibit 735, the Court **does not find** that the danger of unfair prejudice would render this inadmissible.

Counsel for Defendant requests the entire statement of exhibit 735 be played under the Rule of completeness.

Both Counsel provide proposed *In Limine* instruction to the Court.

Court and Counsel discuss the lengthy display of victim photographs during witness testimony. The Court advises exhibits should not remain displayed when they are not pertinent to the testimony. Oral argument ensues.

Both Counsel stipulate to the identity of the victims.

Counsel for State advises of a request for an out-of-state subpoena. The Court advises it will sign the subpoena and provide copies to the parties.

Counsel for State has no objection to Counsel for Defendants instruction and requests the Court provide the State's objection.

~~~Recess~~~

At 10:02 a.m. Court reconvenes, all previously appearing parties and the Jury are present in the Courtroom.

Jennifer Haley having been previously sworn resumes testimony.

Exhibits 743, 744 and 745 are offered and admitted into evidence without objection.

The Court gives legal instruction to the Jury for the audio review of exhibit 743.

The Jury is reminded of the admonition and excused for a recess.

~~~Recess~~~

At 11:14 a.m. Court reconvenes, all previously appearing parties and the Jury are present in the Courtroom.

Jennifer Haley resumes testimony.

Court and Counsel conduct sidebar discussion outside of the presence of the Jury on the record.

The Court gives legal instruction to the Jury for the audio review of exhibit 743.

The Jury is reminded of the admonition, Jennifer Haley is reminded of the Rule for the exclusion of witnesses, excused for the noon recess, and instructed to return at 1:30 p.m.

The Court addresses timing of the exhibits, under Rule 106 there is a ruling that indicates if part of a tape is played, the other part can be played as well. The Court advises due to the number of exhibits listed, there must be cooperation between the parties to make sure evidentiary concerns are addressed. Delay of the Trial cannot occur as it had today.

Court and Counsel discuss disclosure and Counsel for Defendant's Motion to exclude. Oral argument ensues.

Counsel for State requests, if Counsel for Defendant thinks a larger portion of an audio clip should be played, that Counsel for State be let known in a timely manner so they can be prepared in Court with an exhibit that would have an entire context that Counsel for Defendant would want them to play.

The Court advises Rule 106 will be the guide, if there is a clip to be played and it is a statement and admissible as a statement and Counsel for Defendant wants something additionally played, Counsel for Defendant has that right as contemplated by the rules.

~~~Noon Recess~~~

At 1:34 p.m. Court reconvenes, all previously appearing parties and the Jury are present in the Courtroom.

Jennifer Haley resumes testimony.

Court and Counsel conduct sidebar discussion outside of the presence of the Jury on the record.

Exhibit 739 is offered. There being an objection by Counsel, **IT IS ORDERED** sustaining the objection and Exhibit 739 is not admitted into evidence.

Exhibit 739 is offered again. There being an objection by Counsel, **IT IS ORDERED** sustaining the objection and Exhibit 739 is not admitted into evidence.

Exhibit 739 with the date and time redacted is offered. There being an objection by Counsel, **IT IS ORDERED** sustaining the objection and Exhibit 739 is not admitted into evidence.

The Jury is reminded of the admonition, excused for a recess and exits the Courtroom. Jennifer Haley is excused for a recess and exits the Courtroom.

Counsel for State objects to the use of exhibits 738, 739, 740, and 741 by Counsel for Defendant as these were not disclosed to the State in compliance with the rules. Counsel for the State advises there is a disclosure violation and the Court should not allow the exhibits into evidence. Oral argument ensues.

**IT IS ORDERED** the objections are sustained.

~~~Recess~~~

At 3:20 p.m. Court reconvenes, all previously appearing parties are present in the Courtroom. The Jury is not present.

Counsel for Defendant requests the Court reconsider it's ruling precluding the exhibits Counsel for Defendant attempted to admit through Ms. Haley. Counsel for Defendant submits this is not a discovery violation, it is cross-examination and impeachment evidence and requests the Court reconsider preclusion. Oral argument ensues.

The Court advises, Ms. Haley will remain subject to recall in this matter, **IT IS ORDERED** the objections are sustained.

~~~Recess~~~

At 3:40 p.m. Court reconvenes, all previously appearing parties and the Jury are present in the Courtroom.

Jennifer Haley resumes testimony.

Exhibits 146, 147, 319 and 529 are offered and admitted into evidence without objection.

The Jury is reminded of the admonition, advised to return on March 9, 2011 at 9:15 a.m. and excused for the evening recess. Jennifer Haley is reminded of the Rule for the exclusion of witnesses and excused for the evening recess.

The Court advises a note received from a Juror regarding the admonition, has been considered.

The Jury and witness exit the Courtroom.

Counsel for the State requests the Clerk write the exhibit number on the CD's of the 3 audios submitted and used today. Counsel for Defendant has no objection. The Court directs the Clerk to write the exhibit number on the CD's.

The Court stands adjourned for the day.

**END TIME: 5:03 p.m.**

**THEREAFTER OFF THE RECORD**, the Court directs the Clerk to file Defendant's Proposed Limiting Instruction.

cc: Gallagher & Kennedy, P.C., Counsel for Shore Family (e)  
Murphy, Schmitt, Hathaway & Wilson, PLLC, Co-Counsel for Brown Family (e)  
Stone & Magnanini, Co-Counsel Brown Family (e)  
Aspey, Watkins & Diesel, PLLC, Counsel for Neuman Family (e)  
Steptoe & Johnson, Counsel for KPNX Broadcasting Company, TruTV and In Session (e)  
Perkins, Coie, Brown & Bain, Counsel KTVK-TV (e)  
Division PTB (e)  
Victim Services (e)  
Court Administration  
Customer Service Supervisor, Verde